

Federal Grants Management Rules and IDEA Allowability

Brustein & Manasevit, PLLC
(202) 965-3652

Tiffany R. Winters, Esq.

twinters@bruman.com

Bonnie Little, Esq.

blittle@bruman.com

Erin Auerbach, Esq.

eauerbach@bruman.com

March 2012

Agenda

- **Background on Allowability and Grants Rules**
- **Allowability of IDEA Funds**
- **Significant Disproportionality and Coordinated Early Intervening Services (CEIS)**
- **Time and Effort Documentation**
- **Timely Obligations**
- **Financial Management Systems**
- **Procurement**
- **Contract Administration Requirements**
- **Inventory Management Rules**

Legal Structure of Federal Programs

- × Statutes
 - + Program statutes (IDEA)
 - + General Education Provisions Act (GEPA)
- × Regulations
 - + Program regulations (IDEA regulations)
 - + Education Department General Administrative Regulations (EDGAR)
- × OMB Circulars
- × Guidance

EDGAR PLUS Book includes relevant EDGAR sections and the applicable OMB Circulars!!

Allowable Use of Funds

EDGAR 80.22
(page 108)



Use of Funds

- Are there procedures reasonably designed to ensure appropriate use of IDEA funds?
 - Meeting IDEA program rules?
 - Meeting IDEA fiscal rules?
 - Meeting ARRA-specific requirements?
 - Are all costs allowable?
 - How does SEA/LEA ensure allowability?
 - Proper Documentation?
 - Proper Procurement System?
 - Proper Inventory Management System?

Use of Funds- Allowable Cost Questions

- Is the proposed cost consistent with federal cost principles?
 - **OMB Circulars A-87 State, Local & Indian Tribal Governments**
- Is the proposed cost consistent with EDGAR?
- Is the proposed cost allowable under IDEA program and fiscal rules?

1. For a cost to be allowable to a Federal award, it must meet the following criteria:
 - a. Necessary and reasonable.
 - b. Allocable to the Federal grant award.
 - c. Subtract all applicable credits.
 - d. All of the above.

Federal Cost Principles: Basic Guidelines (pg 291-292)

All Costs Must Be:

1. Necessary *
2. Reasonable*
3. Allocable*
4. Legal under state and local law
5. Conform with federal law & grant terms
6. Consistently treated
7. In accordance with GAAP
8. Not included as match
9. Net of applicable credits
10. Adequately documented*

2. OMB Circular A-87 states that a cost is reasonable if:
 - a. It supports the grant objectives, but costs more than the fair market value for the item being purchased.
 - b. The cost does not cause the grantee or subgrantee to exceed its total Federal allocation.
 - c. It does not exceed the cost that would be incurred by a prudent person under similar circumstances.
 - d. None of the above.

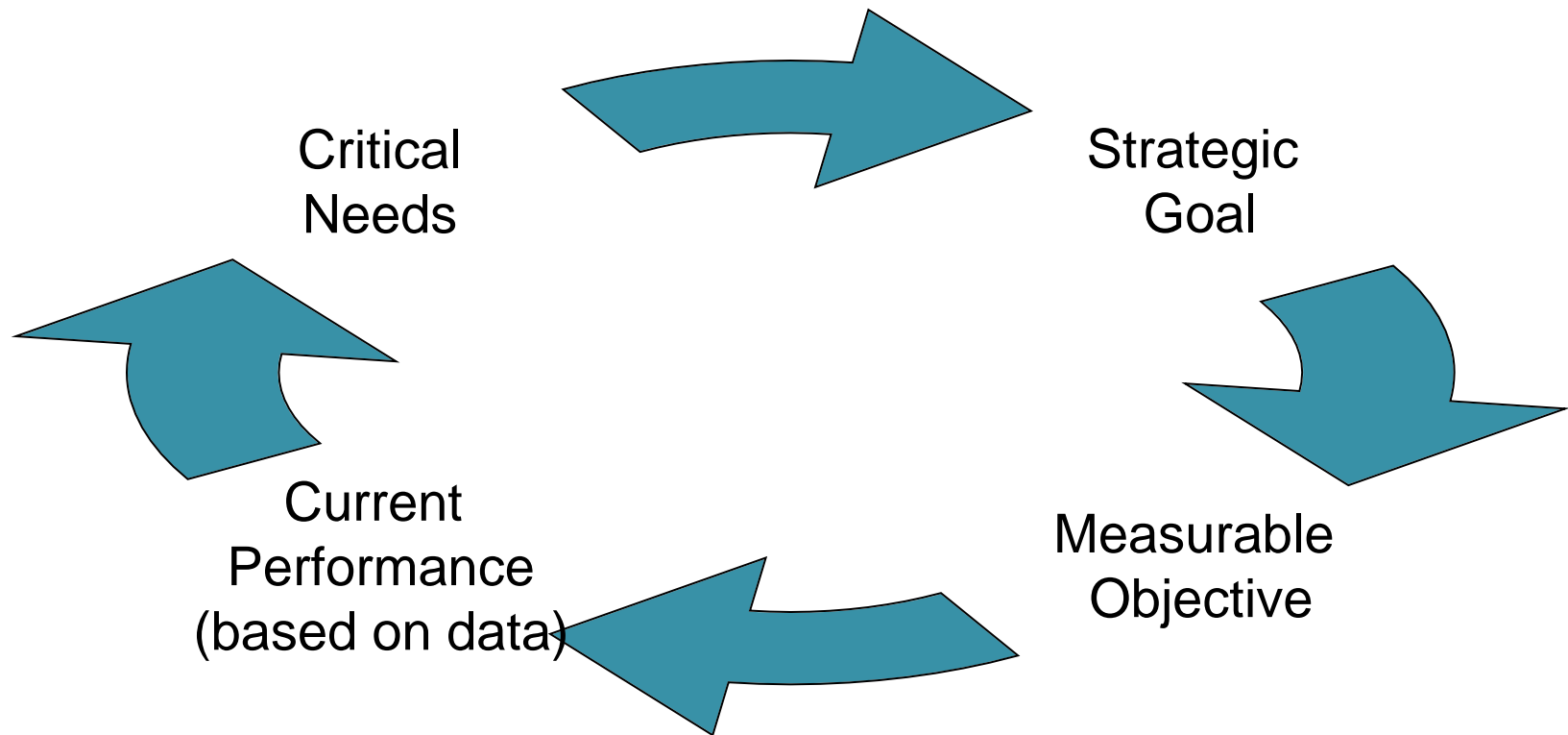
Necessary & Reasonable

Necessary and Reasonable

- Must be necessary for the performance or administration of the grant
- Must follow sound business practices:
 - Arms length bargaining (hint: procurement processes)
 - Follow federal, state and local laws
 - Follow terms of the grant award
- Fair market prices
- Act with prudence under the circumstances
- No significant deviation from established prices

Necessary & Reasonable (cont.)

- Data driven decision making



Necessary & Reasonable (cont.)

- Practical aspects of “necessary”
 - Do I really need this?
 - Is this the minimum amount I need to spend to meet my need?
- Practical aspects of “reasonable”
 - Is the expense targeted to valid programmatic/administrative considerations?
 - Do I have the capacity to use what I am purchasing?
 - Did I pay a fair rate? Can I prove it?
 - If I were asked to defend this purchase, would I be comfortable?

Allocable

- Can only charge in proportion to the value received by the program
 - Example: LEA purchases a computer to use 50% in the Title IV program and 50% in a state program – can only charge half the cost to Title IV
- 2 Methods of allocating costs:
 - Direct cost allocation
 - Indirect cost allocation

Adequately Documented

- ✖ Adequately documented
 - + Amount of funds under grant
 - + How the funds are used
 - + Total cost of the project
 - + Share of costs provided by other sources
 - + Records that show compliance
 - + Records that show performance
 - + Other records to facilitate an effective audit





IDEA Allowability Rules

3. IDEA funds may be used to purchase restaurant gift cards to give to parents, as long as the individual receiving the gift card is a parent of a special education student.
 - a. True
 - b. False

Allowable Uses of Funds under IDEA (examples)

- Child Find Obligation
 - Staff Trainings
 - Evaluations
- IEP Services
 - Special Education Coordinator
 - Service Providers
 - Special Education Teachers
 - Equipment and Supplies
- Coordinated Early Intervening Services
 - 34 CFR 300.208

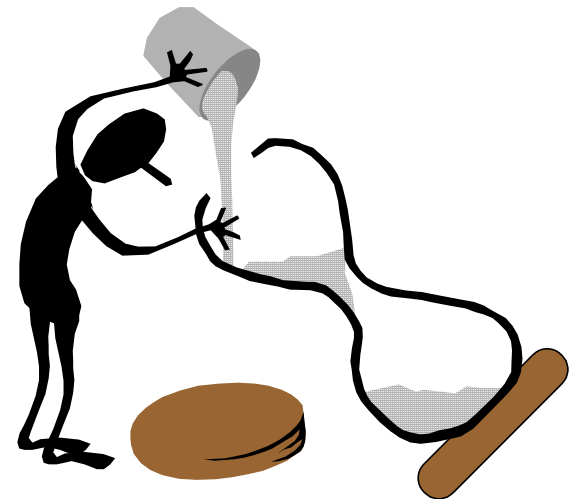
NOT: Attorney's Fees!!!

Supplement Not Supplant

Part B funds must be used to supplement State, local, and other Federal funds, not to supplant those funds.

Designed to ensure Part B funds pay for something “extra.”

34 CFR 300.162



Significant Disproportionality

- Each State must collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring with respect to:
 - The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
 - The placement in particular educational settings of these children; and
 - The incidence, duration, and type of disciplinary actions, including suspensions and expulsion.

34 CFR 300.646

Coordinated Early Intervening Services (CEIS)

- Set-aside up to 15% of Part B allocation to develop & implement coordinated CEIS:
 - 15% Required if Significantly Disproportionate!! (Defined by the OSSE)
- Eligibility:
 - Students who are NOT currently identified, and
 - Who need additional academic and behavioral support to succeed in a general education environment
 - For students in kindergarten through Grade 12 (focus on K-3rd Grade)
 - May be used in RTI system (depending on level)

CEIS

- ◉ **Activities:**

- ◉ Professional development for teachers/staff
- ◉ Providing education and behavioral evaluations, services, and supports
- ◉ Includes scientifically based literacy instruction

- ◉ **No right to FAPE!!**

- ◉ **Reporting:**

- ◉ Report the number of children receiving CEIS
- ◉ Track students that received CEIS for two years

34 CFR 300.226

CEIS and Supplement Not Supplant

- CEIS must supplement any ESEA activities or services. 34 CFR 300.226(e)
- Model example:
 1. CEIS and local funds serve total population – EIS for eligible EIS students
 2. Title I provides Response to Intervention to Title I students and CEIS supplements



Time and Effort Documentation

4. All employees, paid in whole or in part with federal funds, must complete time and effort reports.
 - a. True
 - b. False

Federal Cost Principles

43 Specific Items of Costs detailed
(alphabetical order)

- Salaries and Wages
 - Allowable if proper time distribution records
 - Single Cost Objective: Semi-annual certification
 - Multiple Cost Objectives: PAR Report

Personnel Costs

- Overview of process:
 - Estimate how employee will work
 - Pay based on estimate
 - Reconcile estimates to how actually worked
- Necessary documentation:
 - Payroll records
 - Personnel activity report
 - Semi-annual certifications



Personnel Costs (cont.)

- Type of documentation depends on how many “cost objectives” the employee worked on
- These cost objectives must be connected to the employee’s salary source
- What is a cost objective?
 - A specific grant award, or *other category of costs*, that requires the grantee to track specific cost information

Personnel Costs (cont.)

- ***Examples of IDEA, Part B LEA-level Cost Objectives:***
 - *IDEA Part B program funds*
 - *Coordinated Early Intervening Services (CEIS)*
 - *Administration*

5. A teacher only works on providing special education services to IDEA eligible students. The teacher's entire salary is paid with IDEA, Park B Section 611 funds. He is required to keep:
 - a. Semi-Annual Certifications
 - b. Monthly PARs

Semi-Annual Certification

- If an employee works on a single cost objective:
Semi-Annual Certification
 - After the fact
 - Account for the total activity
 - Signed by employee **or** supervisor every six months
 - Prepared at least twice a year
- Example: “I hereby certify that for the period January 1, 2011 through June 30, 2011 one-hundred percent (100%) of my time and effort was spent on IDEA Administration.”

6. A district administrator works approximately half time on NCLB Title I, Part A, and half on IDEA. She is required to keep:
 - a. Semi-annual certifications
 - b. Monthly PARs

Personnel Activity Report

- If an employee works on multiple cost objectives: Personnel Activity Report (PAR) or equivalent documentation
 - After the fact
 - Account for total activity
 - Signed by employee
 - Prepared at least monthly and coincide with one or more pay periods

Reconciliation

Reconcile Time Distribution Records!

1. Estimate how employee will work
 - Must produce reasonable approximations of the activity actually performed
2. Quarterly comparison of estimates to actual costs
 - If difference is less than 10% - annual adjustment
 - If difference is more than 10% - quarterly adjustment

Timely Obligation of Funds



7. A subgrantee must obligate all Federal funds:
- a. By the end of the Tydings period.
 - b. By the end of the period of availability.
 - c. Within the statute of limitations.
 - d. None of the above.

Obligations

EDGAR 80.23 (pg 108)

- Every grant has a “period of availability” = period in which grantee can obligate funds
- In general, ED cannot extend the period of availability
 - But – NCLB waiver authority

8. Expenditures for services performed by a contractor are obligated to the Federal grant award:
 - a. On the date that the services are performed.
 - b. On the date that the grantee/subgrantee receives the invoice.
 - c. On the date that the subgrantee signs the contract for services.
 - d. At any point during the period of availability.

Obligations

EDGAR 76.707-708 (pg 87)

Type of Obligation	When Obligation Occurs
Acquisition of Property	Date of binding written commitment
Personal Services by Employee	When services are performed
Personal Services by Contractor	Date of binding written commitment
Travel	When travel is taken

9. All obligations must be liquidated within 90 days of the end of the grant award period.
- a. True
 - b. False

Timely Obligations

- Initial Period of Availability 15 months (July 1st – September 30th)
- Carryover – Additional 12 months (Tydings Amendment)
 - Watch High Carryover!
- Liquidation – up to 90 days (usually between October 1st – December 31th)

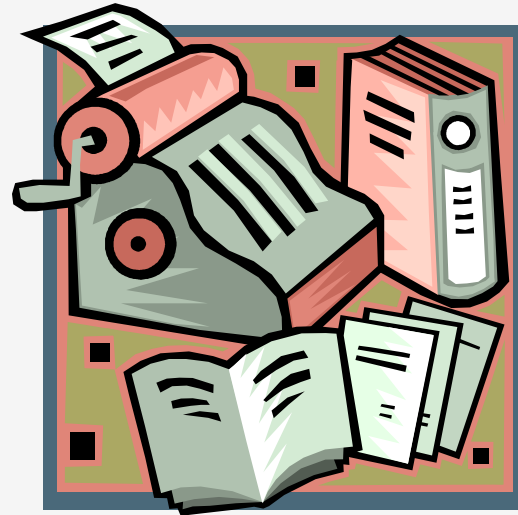
Timely Obligations (cont.)

- Linking Funds – Obligation occurs on August 1, 2011
 - Available funds include:
 - 2009-2010 Funds (available 7/01/09 – 9/30/11)
 - 2010-2011 Funds (available 7/01/10 – 9/30/12)
 - 2011-2012 Funds (available 7/01/11 – 9/30/13)
- But keep in mind the concept of allocability
 - Watch Set-asides (CEIS)

Timely Obligations (cont.)

- **All Reimbursements Must Be An Actual Reimbursement and NOT a Cash Advance!!**
- Cash Management Improvement Act (CMIA)
 - Three days between drawdown and payment
 - After 72 hours interest starts to accrue
 - Any amount of interest over \$100 must be remitted at least quarterly.

Financial Management and Procurement Systems



What Does The Law Require?

- All recipients of federal funds must be able to:
 1. Spend federal money correctly; and
 2. Prove that they spent federal money correctly



Financial Management System: Common Problems

- Controlling allowable costs
- Clear record trail
- Cash management



10. In order to receive Federal funds, grantees and subgrantees must implement financial management systems that:
 - a. Include budget controls, such as routinely reconciling actual expenditures to budgeted amounts.
 - b. Are capable of producing accurate, current and reliable financial reports.
 - c. Include detailed accounting records that show the source and application of Federal funds.
 - d. All of the above.

Financial Management System

Section 80.20(b) Page 107

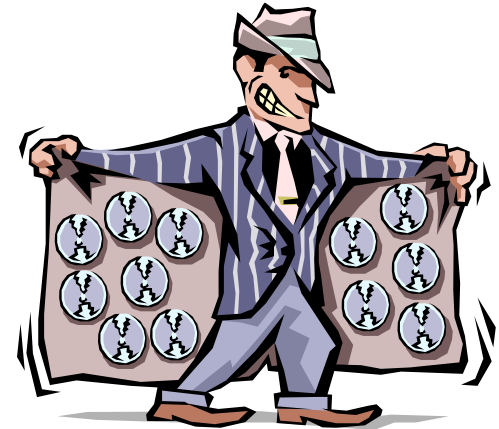
- 7 requirements:
 - Financial Reporting
 - Accounting Records
 - Internal Control
 - Budget Control
 - Allowable Cost
 - Source Documentation
 - Cash Management



EDGAR Procurement Rules

Section 80.36

- All procurement transactions must be conducted with full and open competition
 - Follow Your Procurement Rules!!
- IDEA (B) requires preapproval for Equipment Purchases! (34 CFR 300.718)
 - IDEA definition includes instructional equipment, books, periodicals, documents, and other related materials
 - OSEP creating definition of special education expenditure??



Contract Administration

- Must maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of the contract



11. What forms of procurement documentation should be maintained as a record?
- a. Receipts for actual travel.
 - b. Copy of contract for services performed.
 - c. Payroll registers.
 - d. All of the above.

Source Documentation

- Type of documents:
 - Contracts
 - Invoices
 - Canceled checks (or similar bank record)
 - Paid bills
 - Payrolls
 - Time and attendance records
- Electronic copies ok
- **Must retain for at least 5 years**
 - (Statute of Limitations = 5 years)



Inventory Management System

12. Under EDGAR, a physical inventory of all equipment must be taken:
- a. Yearly
 - b. Once every two years
 - c. Once every six months
 - d. Whenever you feel like it

Equipment Rules

EDGAR 80.32 (pg 114)

Must have adequate controls in place to account for the location of equipment

- Property records
 - Description, serial number or other ID, title information, acquisition date, cost, percent of federal participation, location, use and condition, and disposition (if applicable)
- Physical inventory
 - Must be performed at least every 2 years
- Control system to prevent loss, damage and theft
 - All incidents must be investigated

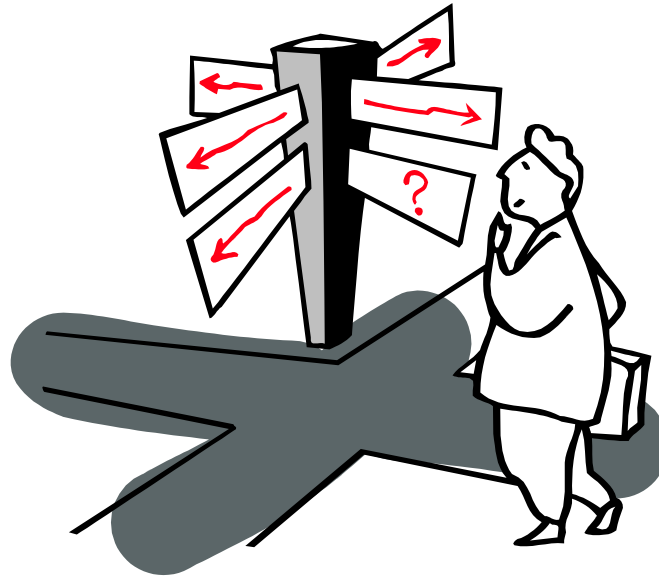
Equipment

- Must protect against unauthorized use
 - Unless other use is incidental and does not interfere with authorized use

Disposition

- When property is no longer needed, must follow OSSE's disposition rules.

Questions?

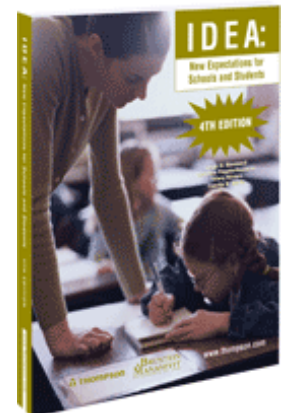


From Brustein & Manasevit, PLLC and Thompson Publishing Group! **ONLY \$179.00** **IDEA: New Expectations for Schools and Students, 4th Edition.**

- Perfect tool for educators, administrators, school attorneys, school board members and parents for getting a quick understanding of your responsibilities and most importantly ... for improving your schools.
- This newly revised *4th Edition* is the only resource with timely, detailed analysis on the New 2% Final Regulations. It also includes in-depth explanations of new pertinent guidance from OSEP, including Q&A and Policy Letters!

Easy Ways to Order:

- 1 Online: www.thompson.com
- 2 Phone: 1.800.677.3789
- 3 Email: service@thompson.com
- 4 Fax: 1.800.999.5661



Brand New Edition from Thompson Publishing Group!

Federal Education Grants Management: What Administrators Need to Know, 3rd Edition

Get a plain-English, insider's guide to help you avoid missteps and maximize your flexibility with federal education funds!

Federal Education Grants Management: What Administrators Need to Know is the only resource that focuses specifically on the unique compliance requirements associated with grants from the U.S. Department of Education.

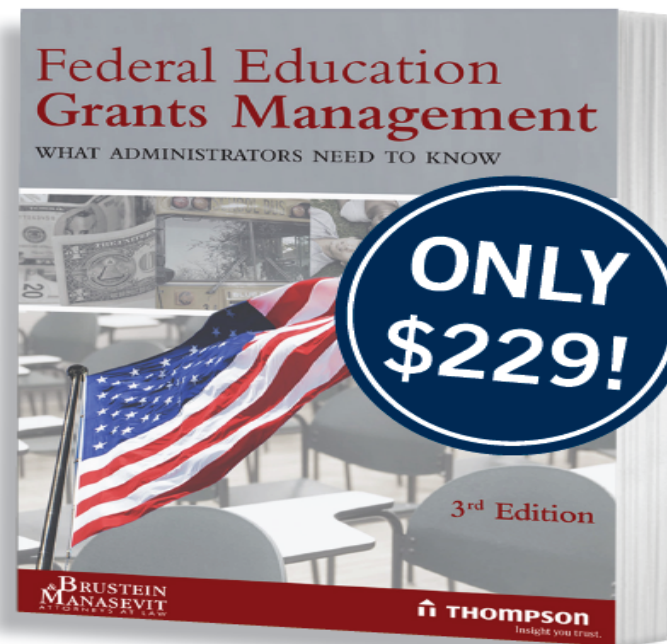
With this Brand New Edition you'll get:

- A clear explanation — finally! — of the Education Department's General Administrative Regulations and what they mean to you
- Detailed coverage of ED's current enforcement priorities
- Practical examples from recent ED monitoring reports
- Expanded explanations of the ever-thorny issues of time distribution and indirect costs
- More details on allowable costs and highlights of newly issued fiscal guidance
- A first look at developing federal grant policies regarding post-retirement health benefits

The newly revised 3rd Edition includes:

- An expanded section on how to determine allowable costs
- More details on calculation of indirect costs
- An explanation of the impact of the American Recovery and Reinvestment Act
- The effect of new fiscal guidance
- An expanded reference section, including new ED cost allocation guidance

Plus, *Federal Education Grants Management* has key compliance documents, such as the administrative regulations for state and local programs, Office of Management and Budget circulars, and relevant excerpts from the Compliance Supplement.



**Please call Matt Hartzog, your National Sales Representative,
at 800-477-5922 or email mhartzog@thompson.com for bulk discount prices.**

Brustein & Manasevit, PLLC's Spring Forum 2012

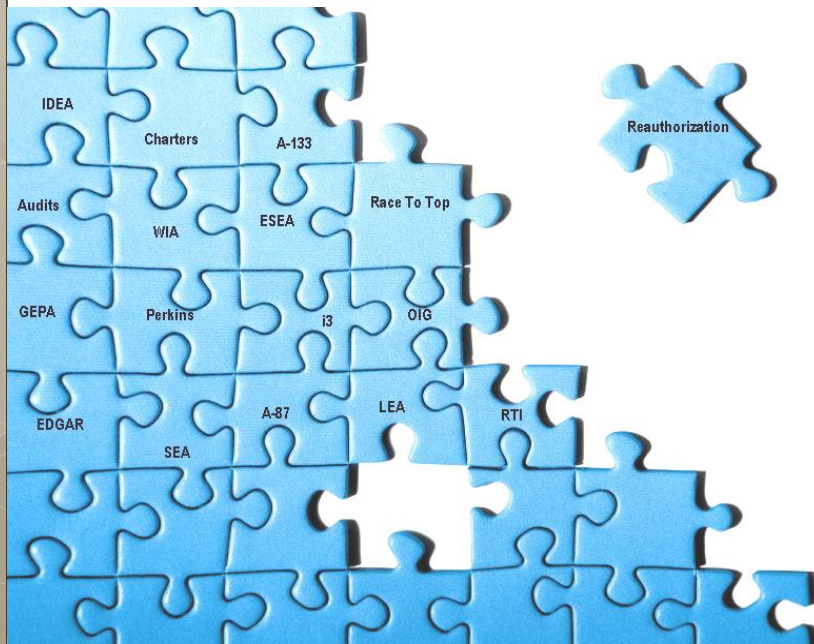
Piecing Together Federal Education Compliance

**REGISTRATION
IS ALREADY 65% Full!!!**

May 2-4th, 2012

**Mandarin Oriental Hotel
Washington, D.C.**

For more details and to register
please visit: www.bruman.com



This presentation is intended solely to provide general information and does not constitute legal advice or a legal service. This presentation does not create a client-lawyer relationship with Brustein & Manasevit, PLLC and, therefore, carries none of the protections under the D.C.

Rules of Professional Conduct. Attendance at this presentation, a later review of any printed or electronic materials, or any follow-up questions or communications arising out of this presentation with any attorney at Brustein & Manasevit, PLLC does not create an attorney-client relationship with Brustein & Manasevit, PLLC. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.